

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF	)	
ROSS RODENBAUGH,	)	
	)	
Appellant,	)	PCHB No. 80-202
	)	
v	)	FINAL FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW
STATE OF WASHINGTON,	)	AND ORDER
DEPARTMENT OF ECOLOGY,	)	
	)	
Respondent.	)	

This matter, the appeal of an order authorizing a permit for the appropriation of surface water in an amount less than applied for, came on for hearing before the Pollution Control Hearings Board, Nat W. Washington (presiding), Gayle Rothrock and David Akana, convened at Longview, Washington on April 21, 1981. Appellant represented himself and respondent Department of Ecology was represented by Rick Kirkby, Assistant Attorney General. Reporter Carolyn Koinzan recorded the proceedings.

Witnesses were sworn and testified. Exhibits were examined. From

1 the testimony heard and witnesses examined, the Board makes these

2 FINDINGS OF FACT

3 I

4 This case involves a single surface water source from a single  
5 spring with two almost contiguous points from which water issues. The  
6 spring as a whole is capable of producing about 0.03 cubic feet per  
7 second (cfs) of water. The spring is located in a small tract in the  
8 SE 1/4 of NE 1/4 of Section 19, T. 7 N., R. 1, W.W.M., Cowlitz  
9 County. This tract was owned by Ms. Vicky Wood at the time the  
10 subject permits were issued. Ms. Wood is the permittee of permit  
11 No. S2-24957 which provides for an appropriation from the subject  
12 spring in the amount of 0.01 cfs and 0.75 acre feet. This permit  
13 which has a priority date of August 17, 1978, has first priority on  
14 the output of the spring. The permit was issued for domestic water to  
15 serve the home located on the small tract. The validity of this  
16 permit has not been questioned.

17 II

18 Appellant Ross Rodenbaugh on January 7, 1979, filed an  
19 application for 0.02 cfs from the subject spring (application No. S  
20 2-25117). On October 23, 1980, the Department of Ecology (DOE)  
21 authorized the granting of a permit with second priority to appellant  
22 for 0.005 cfs and 0.5 acre feet of water for domestic use to be used  
23 for an additional home to be constructed on the tract owned by Ms.  
24 Wood. Ms. Wood joined Mr. Rodenbaugh in signing the application. In  
25 December, 1980, Ms. Wood sold on contract the small tract, including

26 FINAL FINDINGS OF FACT,  
27 CONCLUSIONS OF LAW & ORDER

1 the spring and her home, retaining a contract vendor's interest in the  
2 property.

### 3 III

4 On January 25, 1979, Orval Fleming filed an application for 0.01  
5 cfs from the spring (application No. S 2-25123). DOE authorized the  
6 granting of a permit to Mr. Fleming for 0.005 cfs and 0.5 acre feet of  
7 water, with the number three priority.

### 8 IV

9 On January 26, 1979, Michael R. Bachmeier filed an application for  
10 0.01 cfs from the spring (application NO. S 2-25133) DOE authorized  
11 the granting of a permit to Mr. Bachmeier for 0.005 cfs and 0.5 acre  
12 feet of water, with the number four priority.

### 13 V

14 In his petition for review the appellant asks that he be granted a  
15 permit for 0.02 cfs, which is the amount applied for.

### 16 VI

17 Messrs. Fleming and Bachmeier each have easements for the  
18 operation and maintenance of the spring and for conveying water from  
19 the spring across the property of Vicky Wood to their own properties.  
20 Fleming and Bachmeier and their predecessors in interest have been  
21 utilizing the water from the spring since about 1927 although no water  
22 right was ever obtained. Rodenbaugh has never appropriated any of the  
23 water from the spring.

### 24 VII

25 Even though the spring has not been developed to provide optimum  
26 storage capacity, it has nevertheless provided sufficient water for  
27

1 three homes for many years. It is feasible to supply sufficient water  
2 for four homes by adding storage capacity. The water available after  
3 supplying 0.01 cfs under the Vicky Wood permit is sufficient to supply  
4 Mr. Rodenbaugh, Mr. Fleming and Mr. Bachmeier each with 0.005 cfs,  
5 which, with reasonable storage, will provide a home with sufficient  
6 domestic water.

#### 7 VIII

8 Any Conclusion of Law which should be deemed a Finding of Fact is  
9 hereby adopted as such.

10 From these Findings the Board enters these

#### 11 CONCLUSIONS OF LAW

##### 12 I

13 RCW 90.03.290 provides:

14 any application may be approved for a less amount of  
15 water than applied for, if there exists substantial  
reason therefore...

16 We conclude that under the circumstances there was a substantial  
17 reason for the DOE to approve appellant's application for less than  
18 the amount applied for. See also RCW 90.54.010 and .020.

##### 19 II

20 Under the facts and circumstances here, the principle of first in  
21 time shall be first in right, as set forth in RCW 90.03.010, was  
22 properly applied by DOE. This was accomplished by granting the  
23 applicant a reasonable amount of water and by giving him priority over  
24 those who were allowed an equal amount of water, but whose  
25 applications were filed a few days later than his.

26 FINAL FINDINGS OF FACT,  
27 CONCLUSIONS OF LAW & ORDER

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III

The burden of proof at the hearing was on the appellant, and he did not establish by the preponderance of the evidence that the DOE erred in approving his application for a withdrawal of 0.005 cfs and 0.5 acre feet with a number two priority. The DOE order granting the appellant the right to appropriate surface water but in an amount less than applied for should therefore be affirmed.

IV

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

From these Conclusions the Board enters this

ORDER

The order of the Department of Ecology authorizing the issuance of permit No. S 2-25117 for appropriation of public surface water is hereby affirmed.

DATED this 31<sup>st</sup> day of December, 1981.

POLLUTION CONTROL HEARINGS BOARD

Nat W. Washington  
NAT W. WASHINGTON, Chairman

Gayle Rothrock  
GAYLE ROTHROCK, Vice Chairman

David Akana  
DAVID AKANA, Member

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW & ORDER